

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03133

COUNSEL: NONE

NOV 04 1998

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

That his grade of senior airman (E-4), at the time of his discharge, be restored to **his** former grade of staff sergeant (E-5).

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APPLICANT CONTENDS THAT:

After serving his country for ten years, having gone above and beyond his regular duties and performing above his peers, he was flagged as having a weight problem and he was reduced in grade from staff sergeant to senior airman seven days before he was discharged. Applicant states that it is criminal to discriminate against someone because of their weight anywhere but the military. When he separated, he **was** given separation pay which would **be** repaid with any disability benefits he would possibly receive. If this correction were made retroactive to the date of separation, that separation pay should be almost paid off and he can start receiving the disability benefits sooner.

In support of his appeal, applicant submits a copy of a letter he forwarded to his congressman's office.

Applicant's submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant reenlisted in the Regular Air Force on 27 July 1987 for a period of 5 years in the grade of staff sergeant (E-5).

Available records reflect that on 31 January 1989 the applicant was referred for medical evaluation for possible enrollment in the Weight Management Program (WMP). His maximum allowable weight (MAW) was 203 ½ pounds and the applicant weighed 225 pounds. He was entered into Phase I of the Weight Management Program (WMP) on 21 February 1989. Applicant continued in the WMP and on 19 October 1990, he received a Letter of Counseling for being 29 ¼ pounds over his MAW. He subsequently received

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four Letters of Reprimand (LOR). An LOR on 18 January 1991 for being 40 ¼ pounds over his MAW; LOR on 8 February 1991 for 37 ½ pounds over his MAW; LOR 19 Jul 91 for a weight of 225 pounds; and, LOR on 17 January 1992 for a weight of 223 ½ pounds. The latest LOR was applicant's second unsatisfactory weigh-in since the start of the new WMP. An Unfavorable Information File (UIF) was established and applicant was placed on the Control Roster twice.

Applicant, while in the WMP, was considered and denied reenlistment on 26 November 1991.

On 24 April 1992, applicant's commander notified him of his intent to recommend to the demotion authority that he (applicant) be demoted. The applicant non-concurred with the proposed demotion action and submitted a letter, dated 29 April 1992, in his behalf. Applicant consulted counsel and requested a personal hearing with his commander. On 5 May 1992, the commander decided to continue processing the demotion action. On 29 May 1992, the Wing Staff Judge Advocate reviewed the reasons for the proposed demotion action and found sufficient evidence existed to administratively demote the applicant. On 8 July 1992, by Special Order A-1029, applicant was demoted from staff sergeant to senior airman with a date of rank and effective date of 7 July 1992. Applicant appealed the demotion action on 16 July 1992. His appeal was denied on 24 July 1992 by the Commander, Headquarters First Air Force.

Applicant was honorably discharged on 26 July 1992 under the provisions of AFR 39-10 (Expiration Term of Service) in the grade of senior airman. He served 10 years and 1 day of active military service.

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AIR FORCE EVALUATION:

The Acting Chief, Commander's Programs Branch, HQ AFPC/DPSFC, states that maintaining Air Force weight standards is an individual responsibility. Exceeding Air Force weight standards increases a person's risk of serious health problems, thereby impacting on the individual's and the Air Force's mission readiness. The Weight Management Program (WMP) is a rehabilitative program designed to encourage safe, effective weight loss/body fat reduction, and closely replicates proven civilian weight loss programs. Individual's who allow themselves to exceed the Maximum Allowable Weight (MAW) standard are subject to administrative actions that may reflect during and after their career. Administrative actions may consist of counseling, reprimands, denial of promotion, and ultimately involuntary separation. Commanders perform random weigh-ins and ensure all personnel within their organization are weighed or body fat measured at least once a year. In addition, commanders are required to perform weight or body fat measurements, or both,

during changes in status such as permanent change of station/permanent change of assignment (PCS/PCA), promotions and appointments, temporary duty (TDY) and reenlistments. AFPC/DPSFC is unable to determine all the facts regarding the applicant's progression in the WMP due to the lack of a WMP case file. They recommend the applicant's request be denied.

A copy of the Air Force evaluation is attached at Exhibit C.

The Chief, Inquiries/AFBCMR Section, Enlisted Promotion Branch, HQ AFPC/DPPPWB, states that it is their opinion that the demotion action taken against the applicant was procedurally correct and there is no evidence there were any irregularities or that the case **was** mishandled. However, should the Board grant the request, applicant will be entitled to have his former grade of staff sergeant reinstated with a date of rank of 1 January 1987.

A copy of the Air Force evaluation is attached at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in summary, that he is not questioning whether the Air Force had the authority to enact the demotion. His confusion is the fact that he was an E-5 all the way to the seventh day before he departed the Air Force. Applicant alleges that his sources on the base at the time stated that the paperwork had come from group allowing him to exit the Air Force as an E-5 and then the squadron commander came back from vacation, or whatever his reason for not being on base was, and reversed the decision. Applicant states that his family will suffer from a negative decision because of the difference of income between E-5 and E-4 pay for a 10% disability for hypertension.

A copy of the applicant's response is attached at Exhibit F.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that his pay grade of staff sergeant, prior to his discharge, should **be** restored. His contentions are duly noted; however, we do not find these

assertions, in and **by** themselves, sufficiently persuasive to override the rationale provided by the Air Force. **The** evidence of record reflects that the applicant was placed on the Weight Management Program (WMP) in February 1989 and was continued in the program just prior to discharge. We note the applicant's contention that he believes he was discriminated against **by** being reduced in grade just prior to his discharge. However, by the evidence of record, it appears that the commander followed regulations by taking administrative actions to encourage the applicant to reduce his weight and finally, it was the commander's prerogative to initiate demotion action. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore? we find no compelling basis to recommend granting the relief sought.

4. With respect to the applicant's concern regarding his pay back of his separation bonus and his 10% disability payments? he should contact the Defense Finance and Accounting Service (DFAS-DE), Denver, Colorado, and his local Department of Veterans Affairs.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

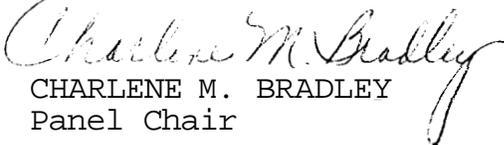
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The following members of the Board considered this application in Executive Session on 8 October 1998, under the provisions of AFI 36-2603.

**Ms.** Charlene M. Bradley, Panel Chair  
**Mr.** Joseph G. Diamond, Member  
**Ms.** Patricia D. Vestal, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Oct 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPSFC, dated 22 Dec 97.
- Exhibit D. Letter, AFPC/DPPPWB, dated 8 Jan 98.
- Exhibit E. Letter, AFBCMR, dated 27 Jan 98.
- Exhibit F. Applicant's Letter, dated 2 Oct 98, w/at ch.

  
CHARLENE M. BRADLEY  
Panel Chair